IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1109 OF 2005
IN
CRIMINAL APPEAL NO.105 OF 2005

Balasaheb Akoba Jadhav ...Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. Girish Kulkarni for the applicant.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 25TH FEBRUARY, 2005

P.C.

1. Heard the learned Counsel appearing for the applicant and the learned APP for the State.

2. Applicant is seeking stay of the order of conviction passed by the Trial Court whereby the applicant was convicted for having committed an offence punishable under the provisions of the Prevention of Corruption Act and was sentenced to undergo R.I. for two years. Appeal has been admitted and the sentence is suspended and the applicant has been released on bail. Applicant has now filed an application for seeking stay to the operation of the judgment and order of the Trial Court.

3. The learned Counsel appearing on behalf of the applicant has submitted that the applicant has a good case on merits. He has submitted that there is hardly any evidence on record on the basis of which the Trial Court could have convicted the applicant. He has submitted that the settled position in law and the ratio laid down in the Judgments of the Supreme Court has not been followed by the Trial Court. It is further submitted that the applicant is a constable and if the operation of the judgment and order of the Trial Court is not stayed, the applicant is likely to loose his job.

4. The learned Counsel appearing on behalf of the applicant has tried to distinguish the judgment of the Supreme Court in the case of **K.C. Sareen Vs. C.B.I., Chandigarh,** reported in **2001 CRI.L.J.4234**. He has relied on para 10 of the said judgment in which it is stated that the High Court has a power to grant stay to the order of conviction in very exceptional cases. He submits that, therefore, the judgment in K.C. Sareen's case (supra) does not cast an embargo on the Court in exercise of its power under section 389(1). The learned Counsel further relied upon the judgment of the Supreme Court in the case of **State of Maharashtra Vs. Gajanan and Anr** reported in **2004(1)**

Crimes 164 (SC) in support of his submission that the High Court can suspend the order of conviction while exercising its power under section 389(1).

5. I am unable to accept the submissions made by the learned Counsel appearing on behalf of the applicant. There cannot be any doubt regarding the legal proposition that the High Court has a power to stay the order of conviction under section 389 sub-clause (1). However, the parameters within which such power can be exercised have been laid down in the Judgment in K.C. Sareen's case where the Apex Court has observed that it would not be proper to allow the person who is convicted under the Prevention of Corruption Act to continue to hold Office during the pendency of the criminal case and he would be entitled to hold such office only after he is exonerated after the judicial adjudication at the appellate or revisional level. The Apex Court in the said judgment in para 11 has observed that corruption by public servants has now reached a monstrous dimensions in India and Apex Court has expressed the need that public servant, who is found guilty of corruption after a judicial adjudicatory process is conducted by the court of law, should be treated as corrupt until he is finally exonerated by the superior court. In

the judgment in Gajanan's case also, the High Court had tried to distinguish the judgment in K.C. Sareen's case and had granted stay to the order of conviction. The Apex Court referring to K.C. Sareen's case reiterated the legal position and set aside the order passed by the High Court.

6. Under the facts and circumstances of the present case, no case is made out for granting stay to the order of conviction. Application is, therefore, rejected.

V.M. KANADE, J.